CMPMO No.105 of 2007.

22.10.2007. Present: Mr. Ramakant Sharma, Advocate, for the petitioner.

Mr. Suneet Goel, Advocate, for respondent No.1.

In the impugned judgment dated 15th March, 2007 passed by the learned Judicial Magistrate Ist Class, Court No.2, Hamirpur, the order/decree dated 20th January, 2006 passed by the Gram Panchayat, Dhirar has been set aside on the only ground of respondent No.1 Smt. Yashoda Devi not having been afforded an opportunity of hearing or participation in the proceedings before the Gram Panchayat. On the very face of it, the impugned judgment is patently erroneous because the only course of action available to the learned Court below after holding that respondent No.1 was not afforded an opportunity of hearing, was to remit the matter to the Gram Panchayat for re-trial. Only on the ground of respondent No.1 not being afforded an opportunity of hearing by the Gram Panchayat, it was not open to the learned Court below exercising its appellate jurisdiction to set aside the order/decree in its entirety. The course of action adopted by the learned Court below resulted in mis-carriage of justice.

Based on the aforesaid reasoning, the impugned judgment is set aside. Consequently, the order/decree

passed by the Gram Panchayat dated 20th January, 2006 is also set aside, but the matter is remanded to the Gram Panchayat for the re-trial of the suit filed by the petitioner.

The parties through their learned counsel are directed to appear before the Gram Panchayat on 10th December, 2007. The petition is disposed of.

22nd October, 2007. (V.K. Gupta), C.J.
(tr)